

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EAGLE HARBOR HOLDINGS LLC, and
MEDIUSTECH LLC,

Plaintiffs,

v.

FORD MOTOR COMPANY,

Defendant.

Case No. 3:11-cv-05503-BHS

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Plaintiffs Eagle Harbor Holdings, LLC and MediusTech, LLC, by and through the undersigned attorneys, hereby bring this First Amended Complaint for patent infringement against Defendant Ford Motor Company, and allege as follows:

THE PARTIES

1. Eagle Harbor Holdings, LLC (“Eagle Harbor”) is a limited liability company duly organized under the laws of the state of Washington, with its principal place of business at 175 NE Parfitt Way, Suite S140, Bainbridge Island, Kitsap County, WA 98110. It is the owner of U.S. Patents Nos. 6,615,137, 6,629,033, 6,778,073, 7,146,260, 7,778,739, 7,793,136, 8,006,117, 8,006,118, 8,006,119, 8,020,028, and 8,027,268 (the “Patents in Suit”).

1 2. MediusTech, LLC (“MediusTech”) is a limited liability company duly
2 organized under the laws of the state of Washington, with its principal place of business at
3 175 NE Parfitt Way, Suite S140, Bainbridge Island, Kitsap County, WA 98110. It is the
4 exclusive licensee, from Eagle Harbor, of the Patents in Suit in the field of use in
5 automobiles.
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7 3. On information and belief, Defendant Ford Motor Company (“Ford”) is a
8 Delaware corporation having its principal place of business at 1 American Road, Dearborn,
9 MI 48126.
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11 **JURISDICTION AND VENUE**

12 4. This is an action for patent infringement arising under the patent laws of the
13 United States, Title 35 of the United States Code. This Court has subject matter jurisdiction
14 over this action under 28 U.S.C. §§ 1331 and 1338(a).
15

16 5. Venue is proper in this Federal Court pursuant to 28 U.S.C. §§ 1391(b)-(c)
17 and 1400(b) in that a substantial part of the events giving rise to the claims occurred in this
18 district and Ford has a regular and established practice of business in this district and has
19 committed acts of infringement in this district.
20

21 **FACTUAL BACKGROUND**

22 6. Eagle Harbor’s predecessor Medius, Inc. (“Medius”) was founded in 2000 by
23 Dan Preston to develop technologies in the areas of information systems, communications,
24 and computer science. Dan Preston is an inventor of most of the Patents in Suit, and Medius
25 was the original assignee of U.S. Patent Nos. 6,615,137, 6,629,033, 6,778,073, 7,146,260,
26 and 7,778,739. Eagle Harbor, which was incorporated in 2010, is the successor-in-interest
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1 of Medius and the original assignee of U.S. Patent Nos. 7,793,136, 8,006,117, 8,006,118,
2 8,006,119, 8,020,028, and 8,027,268.

3 7. From 2002 to 2008, Dan Preston and other Medius personnel engaged in
4 numerous meetings and communications with representatives of Ford and Volvo (which was
5 then owned by Ford) regarding Medius's automotive systems technology and intellectual
6 property. In these meetings and communications, Medius discussed and made presentations
7 to Ford and Volvo describing and disclosing Medius's technology in the areas of telematics,
8 adaptive cruise control, lane departure warning, automated parking support, multimedia, and
9 infotainment.
10

11 8. In 2002, in response to a request from Motorola to demonstrate to Ford a
12 low-cost adaptive cruise control based on Medius's proprietary technology, Medius
13 developed and demonstrated a working prototype of a multi sensor fusion system in support
14 of adaptive cruise control. On September 5, 2002, Medius personnel met and communicated
15 directly with Ford personnel about Medius, its intellectual property, and its automotive
16 technologies, including autonomous and adaptive cruise control, automated parking support,
17 and collision warning, mitigation and avoidance. Also in 2002, a former Ford executive
18 joined Medius's Board of Advisors.
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20

21 9. Beginning in 2004 and continuing to 2008, Dan Preston and other Medius
22 personnel conducted meetings with and gave presentations to Volvo personnel regarding
23 Medius's technology and intellectual property relating to adaptive cruise control, lane
24 departure warning, automated parking support, and other automotive systems. On
25 information and belief, Volvo provided all of Medius's presentations to Ford.
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1 10. From 2004 until 2008, Medius also conducted meetings and direct
2 communications with Ford personnel to discuss Medius's automotive systems technology
3 and intellectual property, and Medius directly provided to Ford the presentations it had
4 prepared for and delivered to Volvo. For example:

5 a. On July 12, 2004, Medius provided Ford with access to an FTP
6 download site containing presentations and technical materials that Medius had prepared for
7 and shared with Volvo, and Ford personnel subsequently acknowledged obtaining materials
8 from the site;

9 b. On July 20 and 21, 2004, Medius communicated with Ford about its
10 automotive systems technology and notified Ford of its U.S. Patent No. 6,615,137;

11 c. On August 20, 2004, Medius communicated with Ford and suggested
12 that Ford could directly license Medius's technology;

13 d. On October 1, 2004, Medius provided to Ford a system reference
14 presentation describing hardware, software, buses, and system architecture for various
15 vehicle applications, including multimedia and infotainment and associated controls and
16 consumer interfaces.

17 11. By 2008, Ford halted its direct communications with Medius, although
18 Medius's communications with Volvo continued into and beyond 2008.

19 12. No later than January 2009, Medius notified Ford that Ford's automotive
20 audio systems, including Ford SYNC, infringed Medius's patents, specifically including one
21 of the Patents in Suit, United States Patent No. 6,778,073.

22 13. No later than March 2010, Medius notified Ford that Ford's automotive
23 electronics systems, including Ford SYNC, infringed Medius's patents, including five of the
24

1 Patents in Suit, United States Patent Nos. 6,778,073, 6,629,033, 7,146,260, 7,778,739
2 (which was then a pending application under notice of allowance, number 11/462,958), and
3 7,793,136 (which was then a pending application, number 11/616,650).

4 14. Despite these notifications and Medius's education of Ford on the automotive
5 systems described herein, Ford has refused to license Medius's patents and has continued to
6 infringe the Patents in Suit by making, selling, offering for sale, and/or actively inducing
7 others to use in an infringing manner, the automotive systems in Ford, Lincoln, and Mercury
8 vehicles, as further set forth in this complaint.
9

10 **COUNT I: INFRINGEMENT OF U.S. PATENT NO. 6,615,137**
11

12 15. Plaintiffs reallege and incorporate by reference paragraphs 1-14.

13 16. On September 2, 2003, United States Patent No. 6,615,137 ("the '137
14 patent"), attached as Exhibit A, was duly and legally issued for an invention entitled
15 "Method and Apparatus for Transferring Information Between Vehicles."
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17 17. On information and belief, Ford has infringed and continues to infringe one
18 or more claims of the '137 patent. Ford is liable for infringing the '137 patent under U.S.C.
19 § 271 by making, selling, offering for sale, and/or actively inducing others to use in an
20 infringing manner, at least Ford, Lincoln, and/or Mercury branded vehicles equipped with
21 Active Park Assist.
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23 18. Ford has actual knowledge of the '137 patent and its infringement is willful.

24 **COUNT II: INFRINGEMENT OF U.S. PATENT NO. 6,629,033**

25 19. Plaintiffs reallege and incorporate by reference paragraphs 1-14.
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1 20. On September 30, 2003, United States Patent No. 6,629,033 (“the ‘033
2 patent”), attached as Exhibit B, was duly and legally issued for an invention entitled “Open
3 Communication System for Real-Time Multiprocessor Applications.”

4 21. On information and belief, Ford has infringed and continues to infringe one
5 or more claims of the ‘033 patent. Ford is liable for infringing the ‘033 patent under U.S.C.
6 § 271 by making, selling, offering for sale, and/or actively inducing others to use in an
7 infringing manner, at least Ford, Lincoln, and/or Mercury branded vehicles equipped with
8 Integrated Control System for Stability Control as disclosed in U.S. Patent Application No.
9 11/468,598, however branded.

10 22. Ford has actual knowledge of the ‘033 patent and its infringement is willful.

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13 **COUNT III: INFRINGEMENT OF U.S. PATENT NO. 6,778,073**

14 23. Plaintiffs reallege and incorporate by reference paragraphs 1-14.

15 24. On August 17, 2004, United States Patent No. 6,778,073 (“the ‘073 patent”),
16 attached as Exhibit C, was duly and legally issued for an invention entitled “Method and
17 Apparatus for Managing Audio Devices.”

18 25. On information and belief, Ford has infringed and continues to infringe one
19 or more claims of the ‘073 patent. Ford is liable for infringing the ‘073 patent under U.S.C.
20 § 271 by making, selling, offering for sale, and/or actively inducing others to use in an
21 infringing manner, at least Ford, Lincoln, and/or Mercury branded vehicles equipped with
22 SYNC and associated head unit and/or instrument panel displays.

23 26. Ford has actual knowledge of the ‘073 patent and its infringement is willful.

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26 **COUNT IV: INFRINGEMENT OF U.S. PATENT NO. 7,146,260**

27 27. Plaintiffs reallege and incorporate by reference paragraphs 1-14.

1 28. On December 5, 2006, United States Patent No. 7,146,260 (“the ‘260
2 patent”), attached as Exhibit D, was duly and legally issued for an invention entitled
3 “Method and Apparatus for Dynamic Configuration of Multiprocessor System.”

4 29. On information and belief, Ford has infringed and continues to infringe one
5 or more claims of the ‘260 patent. Ford is liable for infringing the ‘260 patent under U.S.C.
6 § 271 by making, selling, and/or offering for sale at least Ford, Lincoln, and/or Mercury
7 branded vehicles equipped with SYNC and associated head unit and/or instrument panel
8 displays, and/or with MyKey system.
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10 30. Ford has actual knowledge of the ‘260 patent and its infringement is willful.
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12 **COUNT V: INFRINGEMENT OF U.S. PATENT NO. 7,778,739**

13 31. Plaintiffs reallege and incorporate by reference paragraphs 1-14.

14 32. On August 17, 2010, United States Patent No. 7,778,739 (“the ‘739 patent”),
15 attached as Exhibit E, was duly and legally issued for an invention entitled “Method and
16 Apparatus for Dynamic Configuration of Multiprocessor System.”
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18 33. On information and belief, Ford has infringed and continues to infringe one
19 or more claims of the ‘739 patent. Ford is liable for infringing the ‘739 patent under U.S.C.
20 § 271 by making, selling, offering for sale, and/or actively inducing others to use in an
21 infringing manner, at least Ford, Lincoln, and/or Mercury branded vehicles equipped with
22 SYNC and associated head unit and/or instrument panel displays.
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24 34. Ford has actual knowledge of the ‘739 patent and its infringement is willful.
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26 **COUNT VI: INFRINGEMENT OF U.S. PATENT NO. 7,793,136**

27 35. Plaintiffs reallege and incorporate by reference paragraphs 1-14.
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1 36. On September 7, 2010, United States Patent No. 7,793,136 (“the ‘136
2 patent”), attached as Exhibit F, was duly and legally issued for an invention entitled
3 “Application Management System With Configurable Software Applications.”

4 37. On information and belief, Ford has infringed and continues to infringe one
5 or more claims of the ‘136 patent. Ford is liable for infringing the ‘136 patent under U.S.C.
6 § 271 by making, selling, offering for sale, and/or actively inducing others to use in an
7 infringing manner, at least Ford, Lincoln, and/or Mercury branded vehicles equipped with
8 SYNC and associated head unit and/or instrument panel displays.
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10 38. Ford has actual knowledge of the ‘136 patent and its infringement is willful.
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12 **COUNT VII: INFRINGEMENT OF U.S. PATENT NO. 8,006,117**

13 39. Plaintiffs reallege and incorporate by reference paragraphs 1-14.

14 40. On August 23, 2011, United States Patent No. 8,006,117 (“the ‘117 patent”),
15 attached as Exhibit G, was duly and legally issued for an invention entitled “Method for
16 Multi-tasking Multiple Java Virtual Machines in a Secure Environment.”
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18 41. On information and belief, Ford has infringed and continues to infringe one
19 or more claims of the ‘117 patent. Ford is liable for infringing the ‘117 patent under U.S.C.
20 § 271 by making, selling, offering for sale, and/or actively inducing others to use in an
21 infringing manner, at least Ford and Lincoln branded vehicles equipped with SYNC and
22 associated head unit and/or instrument panel displays.
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24 **COUNT VIII: INFRINGEMENT OF U.S. PATENT NO. 8,006,118**

25 42. Plaintiffs reallege and incorporate by reference paragraphs 1-14.
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1 43. On August 23, 2011, United States Patent No. 8,006,118 (“the ‘118 patent”),
2 attached as Exhibit H, was duly and legally issued for an invention entitled “System and
3 Method for Application Failure Detection.”

4 44. On information and belief, Ford has infringed and continues to infringe one
5 or more claims of the ‘118 patent. Ford is liable for infringing the ‘118 patent under U.S.C.
6 § 271 by making, selling, offering for sale, and/or actively inducing others to use in an
7 infringing manner, at least Ford and Lincoln branded vehicles equipped with SYNC and
8 associated head unit and/or instrument panel displays.
9

10 **COUNT IX: INFRINGEMENT OF U.S. PATENT NO. 8,006,119**

11 45. Plaintiffs reallege and incorporate by reference paragraphs 1-14.
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13 46. On August 23, 2011, United States Patent No. 8,006,119 (“the ‘119 patent”),
14 attached as Exhibit I, was duly and legally issued for an invention entitled “Application
15 Management System.”
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17 47. On information and belief, Ford has infringed and continues to infringe one
18 or more claims of the ‘119 patent. Ford is liable for infringing the ‘119 patent under U.S.C.
19 § 271 by making, selling, offering for sale, and/or actively inducing others to use in an
20 infringing manner, at least Ford and Lincoln branded vehicles equipped with SYNC and
21 associated head unit and/or instrument panel displays.
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23 **COUNT X: INFRINGEMENT OF U.S. PATENT NO. 8,020,028**

24 48. Plaintiffs reallege and incorporate by reference paragraphs 1-14.
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26 49. On September 13, 2011, United States Patent No. 8,020,028 (“the ‘028
27 patent”), attached as Exhibit J, was duly and legally issued for an invention entitled
28 “Application Management System for Mobile Devices.”

1 50. On information and belief, Ford has infringed and continues to infringe one
2 or more claims of the '028 patent. Ford is liable for infringing the '028 patent under U.S.C.
3 § 271 by making, selling, offering for sale, and/or actively inducing others to use in an
4 infringing manner, at least Ford and Lincoln branded vehicles equipped with SYNC and
5 associated head unit and/or instrument panel displays.
6

7 **COUNT XI: INFRINGEMENT OF U.S. PATENT NO. 8,027,268**

8 51. Plaintiffs reallege and incorporate by reference paragraphs 1-14.

9 52. On September 27, 2011, United States Patent No. 8,027,268 ("the '268
10 patent"), attached as Exhibit K, was duly and legally issued for an invention entitled
11 "Method and Apparatus for Dynamic Configuration of Multiprocessor System."
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13 53. On information and belief, Ford has infringed and continues to infringe one
14 or more claims of the '268 patent. Ford is liable for infringing the '268 patent under U.S.C.
15 § 271 by making, selling, offering for sale, and/or actively inducing others to use in an
16 infringing manner, at least Ford and Lincoln branded vehicles equipped with SYNC and
17 associated head unit and/or instrument panel displays.
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19 **JURY DEMAND**

20 54. Pursuant to Rule 38(b) of the Federal Rule of Civil Procedure, Plaintiffs
21 respectfully request a trial by jury on all issues properly triable by jury.
22

23 **PRAYER FOR RELIEF**

24 55. WHEREFORE, Plaintiffs request entry of judgment in their favor and against
25 Defendant as follows:

26 a) Declaring that Ford has infringed each and every one of the Patents in Suit;
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1 b) Awarding damages arising out of Ford's infringement of the Patents in Suit,
2 to Plaintiffs, together with prejudgment and post-judgment interest, in an amount according
3 to proof;

4 c) Permanently enjoining Ford and its respective officers, agents, employees,
5 and those acting in privity with them, from further infringement, including contributory
6 infringement and/or inducing infringement, of the Patents in Suit, or in the alternative,
7 awarding a royalty for post-judgment infringement;

9 d) Declaring that Defendant's infringement of each and every Patent in Suit is
10 willful and deliberate after Defendant has received notice by means of this Amended
11 Complaint;

13 e) Declaring that Defendant's infringement of each and every one of the Patents
14 in Suit is willful and deliberate, and awarding Plaintiffs increased damages under 35 U.S.C.
15 § 284;

16 f) Awarding attorney's fees pursuant to 35 U.S.C. § 285 or as otherwise
17 permitted by law; and

18 g) Awarding such other costs and further relief as the Court may deem just and
19 proper.
20

21 Dated: October 20, 2011

22 By: /s/ Parker C. Folse, III
Parker C. Folse III (WSBA No. 24895)
E-Mail: pfolse@susmangodfrey.com
23 Ian B. Crosby (WSBA No. 28461)
E-mail: icrosby@susmangodfrey.com
24 Floyd G. Short (WSBA No. 21632)
E-Mail: fshort@susmangodfrey.com
25 SUSMAN GODFREY L.L.P.
1201 3rd Avenue, Suite 3800
26 Seattle, WA 98101
27 Tel: (206) 516-3861
28 Fax: (206) 516-3883

Counsel for plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record who receives CM/ECF notification.

DATED: October 20, 2011

By: /s/ Parker C. Folse, III
Parker C. Folse III (WSBA No. 24895)